IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5412 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

UNITED INDIA INSURANCE CO.LTD.

Versus

CHIDIYABHAI MANJIBHAI GAMIT

Appearance:

MR RAJNI H MEHTA for Appellant

MR SHAKEEL A QURESHI for Respondent - Claimant

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/06/98

ORAL JUDGMENT

The respondent No.2 is the owner of the vehicle and as such, neither necessary nor proper party to this Appeal filed by the Insurance Company. This Appeal has arisen from the order of the Motor Accident Claims Tribunal (Main), Surat, dated 12th September 1997 passed in Misc.Application No.147 of 1997 in M.A.C.P. No.269 of

1997, under which Rs.25,000/= were ordered to be paid to the claimant as interim compensation. The Tribunal has further ordered that out of Rs.25,000/=, an amount of Rs.20,000/= shall be deposited in the Fixed Deposit Receipt in the name of the claimant for a period of five years.

2. The learned counsel for the appellant raised before this Court the very contentions which have been raised by the learned counsel appearing for the Insurance Company before the Tribunal. The contentions were that the claimant has come with a case that the accident involved a Trailer but the F.I.R. is silent about the involvement of the Trailer in the accident. Though the Panchnama indicates presence of Trailer, it is silent about the number of Trailer or about the owner of the Trailer. It is contended that the Trailer was never insured with the Insurance Company nor the insurer joined the owner of the Trailer or insurer of the Trailer as a party to the claim application. So the Insurance Company-appellant herein cannot be saddled with any liability. It has further been contended that the Trailer is a goods vehicle and therefore the deceased or the injured persons could not have travelled in the same in breach of the Motor Vehicle Rules. Lastly, it is contended that the Trailer being a different vehicle, carried on a different registration number, and therefore the appellant-Insurance Company cannot be saddled with any liability.

3. On the other hand, the learned counsel for the respondent No.1-claimant contended that the Tribunal has considered all these submissions and after referring to the relevant provisions of the Motor Vehicles Act, 1988, and decisions of the various High Courts, including this Court, the Tribunal has rightly concluded that the appellant is liable for payment of interim compensation to the claimant and this Court may not interfere in the matter.

4. I have considered the rival contentions made by the learned counsel for the parties.

5. I do not consider it to be appropriate to go on the merits of the matter to the extent to decide it finally the question which has been raised by the appellant in this appeal. For the purpose of considering the question of awarding interim compensation as provided under Section 140 of the Motor Vehicles Act, 1988, as amended in the year 1994, the Tribunal has to prima-facie satisfy that it is a fit case where interim compensation

should be awarded. In case this Court decides this question finally at this stage, the finding given by this Court shall be binding and it shall not be open to the appellant therein to raise this point again. Whatever finding given by the Tribunal while deciding the question of awarding the interim compensation are only tentative findings and not final. Still those points are open for consideration to the Tribunal and these findings given while deciding the application for interim compensation are not to be taken as final decision on the issue. The learned counsel for the appellant also, during the course of argument, apprehended that the tribunal has decided that the Tractor and Trailer, when attached to each other, become a single Unit and it becomes the duty of the driver to drive the entire Unit in a way which does not prove to be hazardous either to the third party or the occupants and that finding will be taken to be a final finding and as such, these contentions raised are once for all have been decided. This apprehension of the learned counsel for the appellant seems to be not well founded as these findings were given only for prima-facie satisfaction of the Tribunal that it is a case where the liability of interim compensation can be fastened on the Insurance Company and the owner and the driver of the vehicle. That apprehension expressed by the learned counsel for the appellant also takes me to adopt this course to not decide this contention finally.

6. Be that as it may, after going through the judgment given by the tribunal, I am satisfied that it has not committed any illegality at this stage to pass the order for the award of interim compensation to the claimant-respondent No.1. In the Panchnama, reference of the Trailer is there and at this stage, it is insignificant whether the number of the Trailer has been given or not or whether the owner of the trailer has been made a party or not. The extent to which the submissions are made in the matter at the stage where the Tribunal is considering the question of awarding interim compensation under Section 140 of the Motor Vehicles Act, 1988, seems to be not desirable. However, when the points are raised for deciding the application of the claimant for awarding interim compensation under Section 140 of the Act, 1988, naturally, the Tribunal has to consider the same and give its tentative opinion on these points. In such matters, the normal course should have been to avoid all these ticklish and legal questions at this stage, and prima-facie the Court has to satisfy whether it is a case where interim compensation has to be awarded or not. The Insurance company - Appellant herein has invited decision by making those points which have to be submitted at the

time of final hearing of the matter, after production of evidence. At this stage, even evidence has not been produced by the parties. So on the basis of material which has come on the record, the Tribunal has to decide the entitlement of the claimant for interim compensation. The purpose and object of Section 140 of the Act, 1988, has to be kept in mind and in case, the matters are to be dealt with and decided in the way and the manner, i.e. to take the matter finally, then the very purpose and object of this benevolent provision will be frustrated or these provisions will become nugatory. In the present case, the Tribunal, after considering the relevant provisions of the Act, 1988, and the decisions of this Court, has reached to just and reasonable conclusion that the claimant-respondent is entitled for the interim compensation and to this decision no exception can be taken. In case at this stage the matter is finally decided, then no distinction can be drawn in between the interim compensation and final compensation. To provide immediate financial aid to the injured or the dependents of the deceased who died in the Motor Vehicle accident, this provision has been incorporated in the Motor Vehicles Act, 1988. At this stage, only the prima-facie satisfaction has to be recorded and whatever opinion has been expressed is only tentative subject to final decision after recording evidence of the parties. In the matter of grant of interim compensation as provided under Section 140 of the Act, 1988, by the Tribunal in the motor vehicle accident, the Appellate Court may also not interfere in the matter. It is not out of context to state here that the claimant may not have any concern with these niceties and legal issues. The first and foremost consideration for the Tribunal and for this Court should have been to grant interim compensation to the claimants so that they may not suffer financially or they may have immediate financial assistance. These niceties of legal issues be left for the decision in the main proceedings. Ultimately in case in the main proceedings, after recording the evidence of the parties, the Tribunal reaches to the conclusion that the insurance policy issued to the insurer does not cover the Trailer, then at that stage, the Tribunal can pass appropriate order including the order of giving direction to the owner and driver of the vehicle to pay the amount of interim relief together with interest which has been paid by the Insurance Company to claimants. But so far as the claimants are concerned, they should get immediate financial assistance in the form of interim compensation. This course is still open to the Insurance Company to be agitated in the main proceedings and as observed earlier, ultimately in case it succeeds in proving that it is not

liable to reimburse for the liability of the insurer, certainly appropriate orders can be passed against the owner and driver of the vehicle for reimbursement of the amount to the Insurance Company. Though it is not necessary to clarify, as it is a clear position of law that whatever directions given or observations made while deciding the application for grant of interim compensation under Section 140 of the Act, 1988, are only tentative and are not final decision on the questions, and no observations are required to be made on this point, still as insisted by the learned counsel for the appellant, it is hereby clarified that whatever findings given and the observations made in respect of the contentions raised by the learned counsel for the appellant before the Tribunal are only tentative and those may not be taken to be a final decision on these issues in the final proceedings in the matter.

7. The net result of the aforesaid discussion is that I do not find any merits in this Appeal. The First Appeal fails and the same is dismissed. No order as to costs.

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(sunil)